

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6581 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Versus

BHUPEDNRA SHANTILAL TALATI

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Appearance:

MR NV ANJARIA for Petitioner

MR None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/09/96

ORAL JUDGMENT

Heard learned counsel for the petitioner. The respondent is the owner of a premises bearing Municipal Census No.348/10/9, situated at Nava Vadaj, Ahmedabad. Under the provisions of the Bombay Provincial Municipal Corporations Act, the petitioner fixed the Gross Rateable Value (G.R.V.) of the part of premises of respondent at Rs.1,500/-. This G.R.V. has been fixed by the petitioner as it was found that the premises were

tenant-occupied. This order has been challenged by the respondent by filing an appeal before the Small Cause Court, Ahmedabad. The learned Judge, under its order dated 11.1.83, was pleased to accept the appeal and assessment of the premises made has been quashed and set aside. The appellate Court has held that the premises is occupied by the owner. It has further been held that the premises consisted of two rooms, kitchen and 'Osari' admeasuring in all about 60 sq.yards. A finding of fact has also been recorded that the premises are not let out to anyone and no person by name R.V. Patel or any person is occupying the said premises.

2. One of the contentions made by the learned counsel for the petitioner is that the appellate Court overlooked the fact that even if the assessment made by the petitioner herein of the premises of the respondent has to be set aside on the ground that there was no tenant in the premises, the premises could not go unassessed because in that eventuality it would continue to be self occupied.

3. I find sufficient merits in this contention of the learned counsel for the petitioner. The assessment of the premises made by the Corporation on the ground that the premises occupied by tenant may not be correct. But on finding of the appellate Court that the premises were not occupied by the tenant but were self occupied, the matter should have been remanded back to the petitioner to make fresh assessment on the basis of self occupied premises. No premises could have been allowed to go unassessed. It may be a case of wrong assessment of the property for the purposes of house tax, but it is not a case that the house tax was not leviable on the said property. I therefore consider it to be appropriate to remand the matter to the petitioner for fresh assessment of the premises taking it as self occupied.

4. In support of his contention the learned counsel for the petitioner placed reliance on a decision in the case of Municipal Corporation vs. The Oriental Fire & General Insurance Corpn., reported in 1994(2) GLH 433. The contention of the counsel for the petitioner deserves to be accepted. The order passed in M.V.Appeal No.2059 of 1982 dated 11.1.83 by learned trial Judge, Small Cause Court, Ahmedabad, is set aside to the extent it set aside the assessment made by the appellate officer of the premises bearing Municipal Census No.348/10/9, and the matter is remanded back to the petitioner for making fresh assessment on the basis of self occupied premises by the owner. Rule is made absolute in aforesaid terms

with no order as to costs.

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(sunil)